

1
2
3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 Aimee O'Neil,

7 Plaintiff,

8 v.

9 Pasco County Sheriff,

10 Defendant.

Case No. 2:20-cv-00936-GMN-BNW

**SCREENING ORDER AND REPORT
AND RECOMMENDATION**

11
12 Presently before the Court is pro-se Plaintiff Aimee O'Neil's complaint. ECF No. 1-1.
13 This case arises out of Pasco County Sheriff's ("Pasco's") allegedly illegal search of O'Neil's
14 home in Pasco County, Florida, in 2000. *Id.* at 5.

15 O'Neil moves to proceed *in forma pauperis*. ECF No. 1. O'Neil submitted the affidavit
16 required by 28 U.S.C. § 1915(a), showing an inability to prepay fees or costs or give security for
17 them. *Id.* O'Neil's request to proceed *in forma pauperis*, therefore, will be granted. The court now
18 screens O'Neil's complaint (ECF No. 1-1) as required by 28 U.S.C. § 1915(e)(2).

19 **I. ANALYSIS**

20 **A. Screening standard**

21 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
22 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
23 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be
24 granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
25 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
26 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
27 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient
28

1 factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *See*
 2 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and
 3 may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in
 4 support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908
 5 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

6 In considering whether the complaint is sufficient to state a claim, all allegations of
 7 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*
 8 *Summit P’ ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
 9 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
 10 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
 11 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
 12 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
 13 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
 14 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

15 **B. Screening the complaint**

16 O’Neil brings this case under 42 U.S.C. § 1983 against Pasco. ECF No. 1-1 at 3. O’Neil
 17 alleges that on December 23, 2000, Pasco arrived at her door with an unsigned search warrant and
 18 removed her children in violation of the Fourth Amendment. *Id.* 1-1 at 4-6. O’Neil further alleges
 19 that her due process rights under the Fourteenth Amendment were violated. *Id.* at 6. And O’Neil
 20 alleges that she did not receive notice of a hearing to defend herself. *Id.*

21 O’Neil’s claims under Section 1983 are barred by the statute of limitations. “It is well-
 22 established that claims brought under § 1983 borrow the forum state’s statute of limitations for
 23 personal injury claims” *Action Apartment Ass’n, Inc. v. Santa Monica Rent Control Bd.*, 509
 24 F.3d 1020, 1026 (9th Cir. 2007). Nevada’s personal injury statute of limitations is two years.
 25 *See* NRS 11.190(4)(e); *Howard v. Chronister*, No. 72704, 2017 WL 4079073, at *1 (Nev. App.
 26 Sept. 7, 2017).

27 Here, O’Neil alleges that Pasco conducted an illegal search on December 23, 2000, nearly
 28 20 years ago. Therefore, the Court will recommend dismissal with prejudice on this basis. *Von*

1 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (a
2 complaint may be dismissed when “the running of the statute is apparent on the face of the
3 complaint.”).

4 **II. CONCLUSION**

5 IT IS THEREFORE ORDERED that O’Neil’s application to proceed *in forma pauperis*
6 (ECF No. 1) is GRANTED. O’Neil will not be required to pay the filing fee in this action. O’Neil
7 is permitted to maintain this action to conclusion without the necessity of prepayment of any
8 additional fees or costs or the giving of a security for fees or costs.

9 IT IS FURTHER ORDERED that the clerk of court must file O’Neil’s complaint (ECF
10 No. 1-1).

11 IT IS RECOMMENDED that O’Neil’s complaint be DISMISSED with prejudice.

12 **NOTICE**

13 This report and recommendation is submitted to the United States district judge assigned
14 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
15 may file a written objection supported by points and authorities within fourteen days of being
16 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
17 objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d
18 1153, 1157 (9th Cir. 1991).

19 DATED: October 20, 2020

20 

21 BREND A WEKSLER
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28